

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7952 of 1995

Date of decision:

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VINUBHAI MALABHAI VISANI

Versus

LATHI NAGAR PANCHAYAT

Appearance:

None present for Petitioners
None present for Respondent No. 1
Mr. Samir Dave for Respondent No. 2&3
N.P. Nanavati for Respondent No.4
None present for Respondent No. 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/09/96

ORAL JUDGEMENT

The counsel for respondent No.4 contended that this special civil application is not maintainable for the reason that one of the petitioners has already filed civil suit for the same relief. Another contention raised by the counsel for the respondent is that the

contract of collection of vegetable market tax has come to an end on 31st March, 1995 and as such this petition is otherwise not maintainable. I have gone through the contents of this special civil application. On 30th December, 1995 preliminary objection was raised by the counsel for respondent No.1 to the effect that petitioner No.4 has already filed suit in the court of Civil Judge(J.D.), at Lathi and this fact has been suppressed. This court has ordered for deleting the name of petitioner No.4.

2. It is not in dispute that one of the petitioners has filed civil suit on the same subject matter and that is pending, though that was a serious concealment of fact made by the petitioners. Now that petitioner No.4 has been deleted, still the fact remains that other petitioners have not come before this court with clean hands. The suit has been filed on the same subject matter and as such other petitioners should have joined in the suit rather than to have these parallel proceedings before this court. This course has been adopted deliberately and this court can not be oblivious of the fact that petitioner No.4 was also one of the petitioners who initially joined in this petition. These two simultaneous proceedings in respect of same cause otherwise also is difficult to appreciate. In the case of Agricultural and Processes Food Products vs. Oswal Agro Furane, reported in 1996(4)SCC 297 the apex court has held that suppression of material fact is an abuse of the process of the court. The apex court, in para 29 and 30 of the judgment held as follows:

"29. The facts as stated hereinabove, on the other hand, show that the High Court ought not to have exercised its jurisdiction under Article 226 of the Constitution, for more than one reason, and, therefore, it would be incumbent upon this Court to interfere under Article 136 of the Constitution and not to allow Oswal Agro to take advantage of an obviously wrong decision of the High Court. Firstly the High Court misconstrued clause 15(j) of the order and held that because Oswal Agro was an export-oriented unit, therefore, it could export any item manufactured by it, which conclusion is wholly incorrect. Secondly the High Court ought not to have entertained the writ petition because of Oswal Agro's conduct. It had filed an earlier writ petition in the Punjab and Haryana High Court dealing with the same issue, namely, its obligation and right to export its products under

the licence and in terms of the Export (Control) Order. It is possible that the Delhi High Court may not be aware of the pendency of the writ petition in the Punjab and Haryana High Court, regarding the export of edible rice bran oil, because there is no reference to the filing of the said case in the writ petition filed in the Delhi High Court. Oswal Agro is guilty of suppression of this very important fact. It was contended in the Punjab and Haryana High Court that it was under no obligation to export the edible rice bran oil and its only obligation was to export furfural while, in the writ petition filed in the Delhi High Court, a somewhat contrary contention was raised, namely, that being an export-oriented unit, it was entitled to export non-basmati rice, in addition to furfural. Had Oswal Agro indicated in the writ petition filed in the Delhi High Court that it had also filed a petition in the Punjab and Haryana High Court which was still pending, relating to export of edible rice bran oil, then the Delhi High Court most probably would not have entertained the petition because the proper course which should have been followed by Oswal Agro was to raise this contention, regarding export of non-basmati rice, in the writ petition filed in the Punjab and Haryana High Court on to file a new petition there.

30. Under the circumstances, the exercise of jurisdiction under Article 136 of the Constitution is clearly called for, more so when it is admitted that the respondent had exported over 87,000 MT of non-basmati rice at a price far less than the minimum price fixed by the appellant."

Here also it is the case where the petitioners have conceal the fact that petitioner No.4 had filed civil suit. The respondents have all the right to raise this objection. Only on the ground that petitioner No.4 is no more a party to this petition, the conduct of the petitioner has to be considered as on the date on which this petition is filed and not subsequent thereto. Otherwise also this objection of concealment of fact has remained to be there and it will not come to an end merely on deletion of name of the petitioner now.

3. Otherwise also I do not find any substance in this matter. The petitioner prayed in the special civil

application to issue a writ of mandamus or any other writ in the nature of mandamus quashing and setting aside the imposition of Tax, i.e. Vegetable Market Fee Tax, declaring it to be violative of Articles 14 and 21 and 243(p)(q)(r)(s) of the Constitution of India and ultra vires of Gujarat Municipalities Act, 1963. Challenge has also been made by the petitioner to the action of the respondents to collect the aforesaid tax. It is a case where implementation and not provision has been challenged.

4. From the document annexure-B it is clear that the contract of collection of the aforesaid tax was given for the period 1-4-1994 to 31-3-1995. That period has come to an end much earlier to the day on which this petition has been filed by the petitioners. No other document is produced on record to show and establish that the Nagar Panchayat still continues to recover the aforesaid tax from the petitioner. Document annexure-C alone is not sufficient to establish that the Nagar Panchayat still continues to impose the tax. Lastly, in such matters the approach of the petitioner directly to this court is not appreciable. The petitioner should have first approached the appropriate authority i.e. the Nagar Panchayat and then to the Government, and only thereafter approached this court. That course has not been followed by the petitioner. Taking into consideration the totality of the facts of this case this petition does not survive and the same is dismissed. Rule discharged. No order as to costs.

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